

In The United States District Court
for the Middle District of Pennsylvania

William Branch
Plaintiff

vs.

MR. Russian, et

Defendant

: Civil action No. 1:00-cv-
: 1728
: (Judge Conner)

FILED
SCRANTON

FEB 15 2005

MARY E. D'ANDREA, CLERK

DEPUTY CLERK

Motion for a new trial and to alter

or amend judgement

Per Rule 59 of federal Rules of Civil Procedure and 60
I ask this Court to Remove Judge Conner and do a complete
Review of my § 1983 civil law suit and charge Judge
Conner with Violation of KKK Civil Rights Law "for failure
To apply the Civil Rights Laws against Defendants acting under
color of law" and fraud. Denying Permissive Jurisdiction
for these Reasons I ask this noble Court for a Rehearing ~~en banc~~
~~en banc~~ or Prost of Service.

SACAG Mc Morley esq 15th fl strawberry of Harrisburg Pa 17120
I affirm under penalty of law that the above is true

Respectfully

Date 2-11-05

William Branch CF3756
Po Box 256
Waymart Pa 18472

In the United States District Court
for the Middle District of Pennsylvania

William Branch : civil action No 1:00-cv-1728
VS. Plaintiff : (Judge Conner)
Mr Russian et. al., Defendant :

BRIEF in support of motion for a New Trial
and to alter or amend judgement

If it Please's this noble court her come's William Branch CF3756
a inmate housed at SCI Way-mart.

In the above named case his Honor Judge Conners entered
summary judgement for Defendants after entering several
orders that I feel are questionable and violate my rights
to a fair and impartial Hearing.

① the allowing of summary judgement motion come
after I petitioned the court to allow me supplemental pleading
for over 2 yrs see court Docket sheets

although Rule 15 f.R.C.P. States supplemental pleading are to
be liberally Granted judge Conner did not allow me supplemental
Pleading he also ordered the clerk to stricken my pleading
from the record see: Docket sheet 118 filed 11/26/03 , then
judge Conner said I could not file a amended complaint because
it would prejudice the Defendants summary judgement.

② upon the entering of summary judgement the names of
the Defendants in my supplemental Pleading which were stricken
and not argued for before the court appear on the summary
judgement order.

Page ② Brief in support of motion for a new trial and to alter or amend judgement

③ after a Ruling finding the attorney General ms Mosley of lying about Receive my Request for Discovery, looked for \$10,000.00 judge Conner awarded me \$10.00 and said this is what I stated I wanted he lied on me see: Docket sheet 182-187

also my Discovery was limited about parole and Judge Conner states in is order Granting Summary judgement that I did not Give enough information to show I was denied a fair parole hearing or that I showed any violation of my Constitutional Rights, this ~~limitation~~ limitation came after I had for 2 yrs tried to get Discovery but was unable and after judge Conner ~~allow~~ Received the Defendants to motion for Summary judgement I was only able to get limited Discovery per Judge Conner, Knowing full well Rule 33(a) availability without leave of the court or written stipulation, any party may serve upon other party written interrogatories, in over 2 yrs I was unable to get any Discovery!

④ Exercising Religion

DOC Policy DC-ADM⁸⁰⁷ has been amended since capt. Gavin ordered me to cut my hair in the first instants I was not allowed a opportunity to get an exemption this amendment is a statement that I was right see: DC-ADM 807 Date and 819 Date and the date I was ORDER to cut my hair around or about Sept. 9, 2000. also see: Capt Gavins Declaration appendix H at #7 "I do not afford them the opportunity to disregard my direction and then request a religious exemption signed and dated 1-2-04. he still maintains this mind set, even though DC-ADM 819 was not supplied to the court, and states "a inmate has 15 days after receiving an order to cut his hair to send a letter Requesting an Exemption." see: Page 8^(G) of DC-ADM 819 accommodation

page 2 A

Permissive joinder

Rule 20 f.R.C.P. Judge Conner Refused to allow me to add Defendant forcing me to open a new civil law suit this violates this Rule

See: Nation Sav Corp. Vs City of Allentown 27 f.Supp 515

OCT 8 1939 Stating: When a plaintiff has a like claim against each of two or more defendants he is not driven to separate ~~judgments~~ actions against each, but may sue all in one action, recovering separate judgments against each for the part of the claim for which he is liable

Pearce vs. Penna. Railroad Co. 7 f.R.D 420 affirmed
162 F2d 524 certiorari denied 68 Sct 71 332 US 765
92 Led 350

under federal Rules Plaintiff may Join Defendants in the alternative.

continue #④ Page 8(B.)2.b. in the case of a an inmate Request for an exemption from Department policy. DC-ADM 807, "inmate Grooming and Barber Cosmetology", the inmate must submit a DC-52 within 15 Working days of Receiving the order to cut his hair.

Capt. Gavin by his own Declaration to the Court states he violates this directive yet Judge Conner in his memorandum

Page 28 states: "The actions purportedly taken against Branch including the check of his cell, are clearly supported by legitimate penological objectives in safety and security"

My issue's to the Court are not ~~that~~ whether a policy serves a penological objective but that they used the policy to Retaliate against me See: Mitchell vs Horn 318 F.3d at 530 (3rd Cir.2003)

[10,11] Government actions which standing alone do not violate

the constitution, may ~~violate~~ nonetheless ~~not~~ be constitutional Torts if motivated in substantial part by a desire To punish an individual for exercise of a constitutional Right.

To this end after being forced to cut my hair being transferred back to M-2 and paraded around to humiliate me and gain Bragging Rights by Capt. Gavin and Deputy Shemo, then harassing me with Smoking inmate's knowing I do not smoke Not just one time but 3 or 4 times, placing me on a top Bunk not just one time but 3 or 4 times knowing I had a medical Bottom Bunk Status

Now in Heaven's Name could anyone state that these staff members were not Retaliating against me.

Mitchell vs Horn supra also goes on to state at [12] the word Retaliaton sufficiently implies a causal link between his complaints

Page ⑦ Brief in support of motion for a new trial and to alter or amend judgement

continue ④ and the misconduct charges filed against him

Before I was written up by C/O Russian and charged with threatening a officer and his family, I had written a grievance and several request to Supt Colleman Bates starting 7-15-2000 — 7-20-2000 explaining that C/O Russian was using the safety and security search policy to Retaliate against me

See: Exhibit AA-6 in court Docket Request to staff

Dated 7-15-00 to Mr Colleman Page② at the end stating: I wish to inform you of a C/O acting in Retaliation for me ~~reporting~~
~~and~~ telling him and Reporting him to his Shift Commander Sgt. Cuffin on 7-14-00, five days after I wrote the Grievance, on the 27th of July C/O Russian was sitting at his desk Reading a inmates mail when I asked him about it he said he was threatening him and they put me in the RTU for 45 days.

Your Honor I could go on and on like this examining each point in Judge Conner's order, I ask this noble tribunal, if any of this is on point please I pray you to Rehear my § 1983 completely looking at each allegation as and entirely, transaction and with regard to Ms Surace I filed a motion to the 3rd Cir Court to add her to my complaint back in 1997 Rule 15(c) Relating Back Ms Surace should have be add to my case against fabricatorie and as all these acts of Retaliation follow my first amend Rights to petition the courts for Redress she is still not Barred by the Statute of limitations per. fabricatorie See. Branch vs Fabricatorie CA No. 95-cv-00751 Dated 9-28-97 Motion to order injunction and to add Defendants To my 1983 claim

continue (4) So the issue was before the court and as I have claimed that Branch vs. Fabricatoric CA. No. 95-cv-00751 is the Reason and Start of Retaliation for my Petitioning the Government for ~~Redress~~ Redress, access to court a first amendment Right.

Judge Conner does not seem to be concerned about the staff violating this Right but seem to be looking for a Reason to allow Lt Welling & Lt Freethy to threaten me because I want to petition the government for redress

Lt Welling did his threatening while I was in the RTU Lt Freethy did the same thing ~~and~~ while I was on M-2 Why would a person working under color of the law threaten me any way What legitimate penological objective does threatening an inmate for accessing the court or reporting misconducts, telling him to stop. House vs. Carlson 652 F2d 371

ie at 374 (5) Judge ~~Conner~~ Conner in his assessment of C/O Russions application of DC-ADM 203 does not mention that the policy states no personal property is to be disturbed or that I reported C/O Russian for improper use of this policy on another inmate and then C/O Russian turned on me doing the same thing the inmate named was Mr Chapman who was one of C/O Russian that prompted my approaching Capt Griffin.

The SDAG Ms. Moreley also knew this and stated in her Defendants Brief in support of their motion for summary judgement Page 19, "The defendants do not dispute that Branch can ~~safely~~ satisfy the first and second prongs of Rausier Criteria with respect to defendants Russian, and Surace, Gogas, Gavin

continue ⑤ Walsh and wilbur. Courts have recognized that filing lawsuits and grievances are protected activities under first Amendment ~~see~~ eg. Herron vs. Harris (~~E.D. Pa.~~ 203 F3d 410, 415 (6th Cir 2000) Allah vs Al-Hafeez, 208 F.Supp. 2d 529 535 (E.D. Pa. 2002) and she goes on, ending with my inability to show a causal link, to this I plead Mitchell vs. Horn 318 F.3d at 530 (3rd Cir. 2003) [12] "Retaliation in his complaint sufficiently implies a causal link between his complaints and the misconduct charges filed against him. See: Judge Connors memorandum Page 17. Stating nothing in the record either expressly or implicitly links the Grievances to official actions against Branch.

this is not the applying of know law as state by the third circuit in Mitchell vs. Horn and Rausser vs. Horn

Buse vs. Hudkins 584 F.2d 223, 229 (7th Cir 1978) cert denied 440 US 916 99 S.Ct 1234, 59. L.Ed. 2d 466

"[A]n act in retaliation for the exercise of a constitutional right is actionable under [S]ection 1983 even if the action when taken for different reasons would have been proper"

Therefore I pray this Honorable court will Rehear my complaint and do a complete review of all issues, reversing the Granted summary judgement Respectfully,

Proof of service

SDAG: Ms Mosley ex. 15th fl STRAWBERRY Sq HARRISBURG PA 17120

Unsworn Declaration

I affirm under penalty of the law that the above is true

Date 2-13-05

William Branch CF3756
Po Box 256 Waymart PA 18472

In the United States District Court
for the Middle District of Pennsylvania

%: Judge Vavaskie Cheif
PO Box 1148
Scranton Pa. 18501

Branch vs Russian

Civil action No 1:00-cv-1728

RECEIVED
SCRANTON

FEB 15 2005

Sir inclose Please fine a motion and a Brief
for a new trial and to alter or amend judgment
the reason I am address this motion to you is I am requesting
another judge and a Rehearing of his actions before
~~proceeding~~ proceeding to appeals court

I feel judge Conner is not impartial in fact I wrote
him informing him that I was entering into negotiations
with Ms Mosley eoy S.O.A.G. to resolve this suit before going
to court Ms Mosley then write Judge Conner explaining that
I was amiable to a settle me and asked him to rule on her
motion for summary judgement, which he quickly responded
by granting summary judgement.

Based on his not providing me with full discovery even
thought I had been trying for 2 years or more and Ms Mosley
did not provide me with any until ordered by the court.

I know I did not receive a fair and impartial hearing
in his court unsworn Declaration

I affix my under penalty of the law that Respectfully the above is TRUE

Date 2-13-05

William Branch
PO Box 256
Wayne PA 18472

Name & No. WF3756 Blanch
P.O. Box 356

P.O. Box 238
Waymart, PA 18472-0256

INMATE MAIL
PARADET

MANUFACTURE OF CORRECTIONS

RETURN RECEIPT
REQUESTED

Chief Judge Ulmaskie
P O Box 1148
Scranton Pa 18501

RECEIVED
SCRANTON

MARY E. D'ANDREA. CALIF.
Per _____
DEPOT CASH

18301+1146 33

